

SERVED: July 12, 2013

NTSB Order No. EA-5670

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. § 800.24)  
on the 12th day of July, 2013

_____	)	
MICHAEL P. HUERTA,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket SE-19290
	)	
JODY DUCOTE,	)	
	)	
Respondent.	)	
	)	
_____	)	

**ORDER GRANTING STAY**

The Administrator has requested a stay of NTSB Order No. EA-5664, served June 12, 2013, pending disposition of review of that Order, pursuant to 49 U.S.C. § 44709 and 49 C.F.R. § 821.64. Respondent opposes the Administrator's motion for a stay, and requests the Board issue an order levying sanctions against the Administrator. Section 44709(f) provides, in part, as follows:

(f) Judicial review.--A person substantially affected by an order of the Board under this section, or the Administrator when the Administrator decides that an order of the Board under this section will have a significant adverse impact on

carrying out this part, may obtain judicial review of the order under section 46110 of this title.

Title 49 U.S.C. § 46110 provides procedural instructions for filing appeals. The Board's Rules of Practice, at 49 C.F.R. § 821.64, provide the opportunity for a party to request a stay of a Board order. Section 821.64(b) states as follows:

(b) Stay pending judicial review. No request for a stay pending judicial review will be entertained unless it is served on the Board within 15 days after the date of service of the Board's order. The non-moving party may, within 5 days after the date of service of such a motion, file a reply thereto.

As the text quoted above indicates, the Administrator is not precluded from requesting a stay of the effectiveness of a Board order.

In response to the Administrator's motion, respondent argues a stay would be meaningless, because he is now eligible to exercise the privileges of his certificate. Therefore, respondent contends delaying the effectiveness of Board Order No. EA-5664 pending the Administrator's appeal of the Board's order is an exercise in futility, designed to harass respondent.

In the case at issue, the Administrator sought revocation of respondent's certificates, based on an allegations of intentional falsification under 14 C.F.R. §§ 43.12(a)(1), 61.55(a)(3), 61.59(a)(2), and 91.13(a). In particular, the Administrator alleged respondent failed to maintain correct logbook entries. The Administrator's penalty of revocation is consistent with the granting of a stay pending judicial review. In this regard, the Board summarized its policy with respect to stays of orders pending judicial appeals in Administrator v. Todd,<sup>1</sup> in which the Board denied a request for stay of a 180-day suspension: "We generally grant a stay when a suspension of less than six months [180 days] is affirmed ... Cases involving suspensions of six months or more are evaluated on a case-by-case basis, considering the seriousness of the violations."

In cases in which air safety would be unduly jeopardized if the respondent received his certificate, the General Counsel, on behalf of the Board, has denied a stay. In Administrator v. Logan,<sup>2</sup> the General Counsel's order stated:

The Board ordinarily grants stays in aviation enforcement cases in which a suspension of 180 days or less has been affirmed. That policy reflects a judgment that aviation safety will not be unduly jeopardized by the temporary postponement of sanction in less serious cases while a court reviews the validity

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<sup>1</sup> NTSB Order No. EA-4399 (1995); see also Administrator v. Simmons, NTSB Order No. EA-5542 (2010).

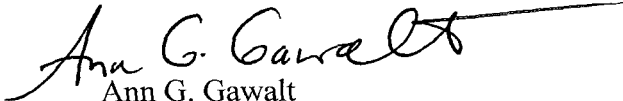
<sup>2</sup> NTSB Order No. EA-4950 (2002).

of the Board's decision. Although this case resulted in a suspension that may run no more than 30 days, it involves more than a violation based on an airman's past conduct. It involves the Administrator's clear and, to date, defied authority to inspect certain records pursuant to a request that has not been shown to be unreasonable.

As stated above, the case at issue here involves allegations of intentional falsification. The Administrator proceeded with the case as an emergency under 49 U.S.C. §§ 44709(b)(1) and 46105(c), and sought a sanction of revocation. This indicates the seriousness of the alleged violations, and counsels in favor of granting a stay. Although respondent contends granting a stay will have no practical effect on his exercise of the privileges of his certificate, the Board must apply § 821.64 in a consistent manner, and must adhere to relevant precedent.

**ACCORDINGLY, IT IS ORDERED THAT:**

The Administrator's request for a stay of NTSB Order No. EA-5664 is granted until such time as the Administrator files a petition for review in the United States Court of Appeals and the Court rules on that petition or until the 60-day filing deadline passes.

  
Ann G. Gawalt  
Acting General Counsel